



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.
FOR
LOVE'S TRAVEL STOP #239
VPDES Permit No. VA0090956**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality and Love's Travel Stops & Country Stores, Inc., regarding Love's Travel Stop #239, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means discharge of a pollutant.
5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. "DMR" means Discharge Monitoring Report.
7. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
8. "Facility" means Love's Travel Stop #239 located at 145 Major Grahams Road, Max Meadows, Virginia, which discharged wastewater from an oil/water separator through an outfall.
9. "Love's" means Love's Travel Stops & Country Stores, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Love's Travel Stops & Country Stores, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0090956, which was issued under the State Water Control Law and the Regulation to Love's Travel Stops & Country Stores, Inc. on July 1, 2017, and which was administratively continued on June 30, 2022.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present

or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Department, are "pollution." Va. Code § 62.1-44.3.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Love's owns and operates the Facility located at 145 Major Grahams Road, Max Meadows, Virginia, which discharged from its oil/water separator (OWS) through Outfall 101.
2. The Permit allows Love's to discharge from its OWS through Outfall 101 to an unnamed tributary of Reed Creek, in strict compliance with the terms and conditions of the Permit.
3. Reed Creek is located in the New River Basin, Section 2, Class IV, Special Standards: v. Reed Creek is listed in DEQ's 305(b)/303(d) Integrated Report as impaired for *E.coli* and PCBs in fish tissue. The *Bacteria Total Maximum Daily Load Development for Mill Creek, Cove Creek, Miller Creek, Stony Fork, Tate Run, South Fork Reed Creek and Reed Creek in Wythe County, Virginia* was approved by the EPA on October 1, 2012 and by the SWCB on March 25, 2013. The *PCB Total Maximum Daily Load Development*

for Reed Creek, the Upper New River, Peak Creek, Walker Creek, Stony Creek, and the Lower New River was approved by the SWCB on December 13, 2018 and by the EPA on March 12, 2019.

4. In submitting its DMRs, as required by the Permit, Love's has indicated that it exceeded discharge limitations contained in Part I.A of the Permit, as described in the table below:

Parameter	Observations - DMR Monitoring Period and Relevant Reported Monitoring Results					Legal Req.
	12/2021	04/2022	05/2022	06/2022	07/2022	
002 pH minimum concentration (SU)	5.8	5.86		5.79	4.9	6.0
257 Total Petroleum Hydrocarbons maximum concentration (mg/L)	37.7	155	188	181	278	15

5. On May 27, 2022, SWRO issued WL No. W2022-05-S-1007 to Love's, citing the April 2022 violations of permitted effluent limits described in paragraph C(3), above.
6. On July 6, 2022, SWRO issued WL No. W2022-05-S-1007 to Love's, citing the May 2022 violation of permitted effluent limits described in paragraph C(3), above.
7. On September 14, 2022, SWRO issued NOV No. W2022-09-S-0001 to Love's, citing the April, May, June, and July 2022 violations of permitted effluent limits described in paragraph C(3), above. While not cited in a WL or NOV, the December 2021 violations are also covered by this Order.
8. The Permit, at Part I, Section A, sets forth the final effluent parameter limits.
9. Va. Code § 62.1-44.5 states, in part: "Except in compliance with a certificate or permit issued by the Board..., it shall be unlawful for any person to... [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...".
10. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
11. On September 15, 2022, a conference call was held between Love's, its consultant, Apex Companies, LLC (Apex), and DEQ to discuss the September 14, 2022 NOV. Apex, on behalf of Love's, submitted a follow-up written response to the NOV on September 19, 2022. The response indicated that the permitted outfall from the Facility's OWS had been permanently capped in early August 2022 and included photographic documentation of the capped outfall. Upon capping of the outfall, Love's implemented pumping and

hauling of liquid collected by the OWS to a permitted treatment facility, minimizing the probability of future violations of permitted effluent limits. A copy of the non-hazardous waste manifest for transport and disposal of the recovered liquid was provided with the response. Apex indicated that site personnel inspect the OWS weekly to determine when liquid levels warrant a pump-out.

12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
13. The Department has issued no permits or certificates to Love's other than VPDES Permit No. VA0090956.
14. Reed Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
15. Based on the monthly DMRs submitted to DEQ by Love's and the September 19, 2022 correspondence submitted to DEQ by Apex, the Department concludes that Love's has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, as described above.
16. In order for Love's to return to compliance, DEQ staff and representatives of Love's have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders Love's Travel Stops & Country Stores, Inc., and Love's Travel Stops & Country Stores, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,267.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Love's Travel Stops & Country Stores, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due

under this Order to the Department of Law, Love's Travel Stops & Country Stores, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Love's for good cause shown by Love's, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2022-09-S-0001, dated September 14, 2022, WL No. W2022-07-S-1001, dated July 6, 2022, and WL No. W2022-05-S-1007, dated May 27, 2022. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Love's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Love's consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Love's declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Love's to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Love's shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Love's shall demonstrate that such

circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Love's shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Love's. Nevertheless, Love's agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Love's has completed all of the requirements of the Order;
 - b. Love's petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Love's.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Love's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Love's and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Love's certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Love's to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Love's.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Love's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22nd day of February, 2023



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Love's Travel Stops & Country Stores, Inc. voluntarily agrees to the issuance of this Order.

Date: 11-29-2022 By: Kevin Nickell, Env Manager
(Person) (Title)
Love's Travel Stops & Country Stores, Inc.

State of Oklahoma
~~Commonwealth of Virginia~~

City/County of Oklahoma

The foregoing document was signed and acknowledged before me this 29 day of
November, 2022, by Kevin Nickell who is
Environmental Manager of Love's Travel Stops & Country Stores, Inc., on behalf of
the corporation.

Reva Fitton
Notary Public

07008736
Registration No.

My commission expires: 09-19-2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Love's Travel Stops & Country Stores, Inc. agrees to perform the following actions:

1. Maintain the cap on permitted Outfall 101, and continue pumping and hauling of liquid collected in the Facility's OWS to a permitted treatment facility until such time that monitoring of OWS contents verify that effluent is of sufficient quality to comply with the requirements of the Permit.
2. Until such time that the cap is removed from Outfall 101, provide documentation on each DMR stating that the cap is in place and that no discharges have been allowed to occur.
3. At time of DMR submittal each month, provide applicable manifests verifying that liquid collected in the OWS is being pumped and hauled to a permitted facility for treatment and/or disposal. For months during which no OWS pump-outs occur, provide documentation on the DMR stating the reason no pump-outs were performed (e.g., "OWS liquid volume did not warrant a pump-out").
4. Prior to removing the cap and resuming discharge from Outfall 101, provide written notification to DEQ, to include storm water sampling results verifying that OWS contents are of sufficient quality to comply with the requirements of the Permit.

Unless otherwise specified in this Order, Love's shall submit all requirements of Appendix A of this Order to:

Ruby Scott
Compliance Auditor
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
Phone: (276) 477-9891
ruby.scott@deq.virginia.gov